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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 1362

WOODROW W. CHABERT, PAUL A. CLEMENT, ET AL.,
Plaintiffs-Appellants,

versus

CITY OF WESTWEGO, ET AL.,
Defendants-Appellees.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ANSWERS TO ISSUES PRESENTED FOR REVIEW

The issues presented for a review herein are:

(1) That Ernest J. Tassin, the duly elected Mayor is qualified to sit as judge of the Municipal Court of the municipality of Westwego.

(2A) That the manner of electing aldermen in the City of Westwego, which is an at large election is not

contrary to the equal protection or due process clause of the fourteenth amendment.

(2B) Further that the voting rights of the constituents of the municipality of Westwego are not being denied either under Louisiana law or under the Federal Constitution.

(3) The actions of Sidney Guillot, Marshal of Westwego, are not a violation of the equal protection clause of the fourteenth amendment.

Defendant-Appellees admit the jurisdiction of the Court.

ANSWER TO QUESTIONS PRESENTED:

I

Ernest J. Tassin, duly elected Mayor of the City of Westwego, is qualified to sit as judge of the Municipal Court of the City of Westwego.

The Mayor's Courts were created by the Louisiana Legislature in the Lawrason Act and more particular L.R.S. 33:441.

> L.R.S. 33:441 Mayor's Court:
> Except as provided in Chapter 7 of Title 13, there should be a Mayor's Court in the municipalities, with jurisdiction over all violations of municipal ordinances. The Mayor may try all breaches of the ordinances and impose fines

> or imprisonments, or both, provided for the infractions thereof.

Revised Statute 33:441 has not been declared either unconstitutional or has it been supplemented with a new statute abolishing the Mayor's Court. L.R.S. 33:441 is still a valid Louisiana statute and the actions of the Mayor are within the intent of said statute.

Petitioner in his complaint has stressed Article 7, Section 51 of the Louisiana Constitution of 1921 which among other things provided for an abolition of the Justice of the Peace courts and the creation of the city court system. But what the petitioner failed to illuminate to the court is that Article 7 Section 51, Sub-section E is pertinent to the question of the Mayor's Court.

> Article 7, Section 51, Sub-section E; Ordinance violation; jurisdiction
> The legislature may vest in Mayors, or in other municipal officers, such jurisdiction of the violation of municipal ordinances as may be found necessary.

It can be ascertained that the constitutional amendment did not abolish the Mayor's Court, and that the abolition of the Justice of the Peace Court did not disturb the power of the Mayor to conduct court where the infractions are those of city ordinances. The Court should also be cognizant of Article 7, Section 51a of the Louisiana Constitution.

51a. Parish Courts Jefferson Parish

The legislature shall have the power to create parish courts in the Parish of Jefferson. The boundaries of such parish courts shall be fixed by the legislature and within such boundaries, they shall have such civil and criminal jurisdiction as may be provided for by the legislature, providing the civil jurisdiction shall not exceed the value or sum of $1,000.00, exclusive of interest and costs, and the criminal jurisdiction shall be limited to trials of offenses not punishable by imprisonment at hard labor under the laws of this state.

The legislature shall provide for the number of judges, their qualifications, term of office, compensation, powers and duties. Upon the creation of such courts the legislature shall provide for the election of the judges thereof by the qualified electors residing within the jurisdictional boundaries of such courts at the same time as the district judges are elected within the state. However, the first judge or judges shall be elected at the state general election held in 1964, to serve until the election of district judges next following the general election.

The legislature shall also provide for the necessary personnel for the operation of such courts and make such other provision as may be considered necessary to establish and operate such courts.

This constitutional amendment was implemented by the legislature in L.R.S. 13:2561.1 et seq. and also L.R.S. 13:2562.1 et seq. The pertinent part for the court is L.R.S. 13:2562.1 which created the boundaries of the Second Parish Court for the Parish of Jefferson.

> 2562.1 Creation; Territorial boundaries
> There is hereby created a court to be known and designated as "The Second Parish Court for the Parish of Jefferson, State of Louisiana," the territorial boundaries of which shall be wards 1, 2, 3, 4, 5, 6 and 11 of the Parish of Jefferson which is composed of all that territory in the Parish of Jefferson lying west of the Mississippi River. Acts 1966 No. 5 Sub-section 1.

Presently the Second Parish Court for the Parish of Jefferson encompasses the Fourth Ward and Westwego comprises only a part of said Ward. Thereby the legislature instead of creating the city court system created in lieu thereof the parish court system in Jefferson. The Parish is composed of numerous municipalities each having their own Mayor's Court which hear violations of their city ordinances. The next rung of the ladder is the parish court whose jurisdiction is defined in L.R.S. 13:2562.3. This article gives the parish courts the jurisdiction of all criminal cases arising either on the east or west bank of the Mississippi River, but shall not include capital cases or those crimes or offenses which are punishable by imprisonment at hard labor under the laws of this state.

The appellants in their complaint state that the Mayor's Court is a denial of equal protection and due process of law, but what the appellants fail to point out to the court is that a person receiving an adverse judgment in the Mayor's Court has the right to appeal. Article 7 Section 36 of Louisiana Constitution lays out the appellate jurisdiction of the district courts.

> Article 7 Section 36 Appellate jurisdiction; trials de novo
> The district courts have appellate jurisdiction, except as otherwise provided in this constitution, for the following cases; All appeals in civil cases tried by Justice of the Peace within their respective jurisdiction; all appeals in civil cases tried in city or municipal courts within their respective districts where the amount in dispute, or the value of the movable property involved does not exceed $100.00, exclusive of interest; all appeals from orders of Justices of the Peace requiring a peace bond; *and all appeals from sentences imposing a fine or imprisonment by Mayor's Court or by city or municipal court.* (Emphasis ours) These appeals shall be tried de novo and without a jury; but no evidence shall be admitted on the trial de novo which was not offered in the lower court unless it is shown to the satisfaction of the court that, despite the exercise of reasonable diligence by the party offering it, such evidence could not have been produced at the trial in the court below.

From the above it can be readily ascertained that the present composition of the Mayor's Court in the City of Westwego is not unconstitutional and does not violate the laws of the State of Louisiana. (See also Judge Lansing L. Mitchell's reasons for Judgment dated June 15, 1970, Index pages 25, 26, and 27).

The appellees contend that the citizens of the City of Westwego are not being denied their constitutional rights under the due process or equal protection clauses of the Fourteenth Amendment nor are they denied due process under the Sixth Amendment of the United States Constitution. The Mayor's Court for the City of Westwego is not a violation of the Fourteenth Amendment of the United States Constitution.

The people of Westwego have the right to determine who shall sit as the Judge of the City Court, which they have done by electing the Honorable Ernest J. Tassin, Mayor. If the plaintiffs are not satisfied with the particular decisions, the remedy lies with the people and the ballot or impeachment proceedings.

It is not unusual to have some people dissatisfied with the decisions of Court.

II-A

The manner of electing the board of aldermen in the City of Westwego is not a denial of either due process or the equal protection clause of the Fourteenth Amendment. The manner of electing the board of al-

dermen in the City of Westwego does not violate the Lawrason Act, (L.R.S. 33:382).

The appellants contention is that because the board of aldermen in the City of Westwego run at large rather than from any particular ward this denies petitioner the right to one man-one vote rule laid down by the Supreme Court.

It has clearly been held that an at large system is not per se unconstitutional, *Fortsen vs. Dorsey*, 85 Supreme Court 498, 1965; *Dusch vs. Davis*, 87 Supreme Court 1554, 1967; *Owens vs. School Commissioner of Boston*, 304 Fed. Supplement 1327 (DC 1969).

The constitutional test under the equal protection clause is whether there is invidious discrimination.

It might well be that, in a particular circumstance, an at large system would be invalid. However, where the requirements of *Reynolds vs. Simms* (84 Supreme Court 1362; 1964) are met, apportionment schemes would constitute an invidious discrimination only if it can be shown that an at large system under the circumstances of a particular case would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. *Burns vs. Richardson*, 86 Supreme Court 1286, (1966); *Chavis vs. Whitcomb*, 305 Fed. Supplement 1364, (SD Indiana 1969).

The leading case is *Dusch vs. Davis*, 387 U.S. 112, 87 Supreme Court 1554 where Mr. Justice Douglas speaking as the organ of the Court approved of a so-

called seven-four plan of city government. By this plan there were seven members who must reside in each individual borough of Virginia Beach and must run at large, with an additional four members of the city council also running at large. Thereby all members of the city council ran at large. However, the seven must come from each particular borough.

> "*The seven four plan makes no distinction on the basis of race, creed, or economic status or location. Each of the eleven councilmen is elected by a vote of all the electors in the city.* (Emphasis ours) The fact that each of the seven councilmen must be a resident of the borough from which he is elected, is not fatal. In upholding a residence requirement for the election of state senators from a multi-district county we held in Fortson v. Dorsey, 379 US 433, 438, 85 Supreme Court 498, 501. 'It is not accurate to treat a senator from a multi-district county as a representative of only that district within the county wherein he resides.' The states use district and multi-district counties merely as a basis of residency for the candidates, not for voting or representation. Each district senator must be a resident of that district, but since his tenure depends on the county wide electorate he must be vigilant to serve the interest of all the people in the county, and not merely those people in his home district; thus in fact he is the county's and not merely the District's senator". (85 Supreme Court at 1555-56)

The United States Court of Appeals for the Fifth Circuit on August 15, 1969 decided the case of *Max B. Goldblatt v. The City of Dallas*, No. 26557, 414 F.2d 774. This case is not on point but it is analogous to the situation which is presently before the court where there is an at large system of electing councilmen. A citizen was claiming it was a denial of equal protection to the voters because a candidate must run at large and as such, it defeats the will of the voters of a particular district.

> "The City Charter of Dallas, Sections 19, 20 and 21 divides the city into six substantially equal districts. These sections provide for the city-wide election of nine city councilmen; six of whom must be residents of the six districts; the remaining three must run at large (six-three plan).
>
> In the Dallas City council election held on April 5, 1967, appellant received the majority of the votes in his residence district but was outpolled in the remaining five districts and lost the election. As a consequence, the defeated candidate sought to vitiate the election results and sought both a preliminary and permanent injunction in the court below restraining the city from holding elections under Section 21 of the Charter.
>
> The appellant urged the entry of the injunctive orders on the ground that Section 21 is unconstitutional as denying the appellant and all vot-

ers in his district equal protection of the law in violation of the Fourteenth Amendment. The court below refused to issue the injunctions and granted the City's motion for summary judgment. After some procedural sparring, this appeal was finally taken.

The appellant wisely does not contend that the Dallas "six-three" city council election structure is unconstitutional per-se. An analogous plan was specifically approved by the Supreme Court in Dusch v. Davis, 387 U.S. 112, 87 S.Ct. 1554, 18 L.Ed.2d 656 (1967). See also Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401; Davis v. Thomas County, Georgia, 5 Cir. 1967, 380 F.2d 93; Robertson v. Gallion, M.D. Ala. 1968, 282 F. Supp. 157; Reed v. Mann, N.D.Ga. 1964, 237 F.Supp. 22. Rather the appellant's contention is that the charter provision as applied is a denial of equal protection to himself and the other voters of his district.

The essential theory of the appellant is that a Dallas organization known as the Citizens Charter Association (C.C.A.) has used Section 21 to perpetuate and preserve control of the city council. The appellant describes the C.C.A. as a group which is comprised of all powerful millionaires who use their power, influence, position, and money to back their own handpicked candidates.

The appellant asserts that Section 21 is a denial of equal protection to voters because it permits the influence of the C.C.A. to be applied city-wide so as to defeat the will of the voters of a particular district. Further the appellant suggests that Section 21 constitutes a denial of equal protection to independent candidates who are financially unable to compete with the wealth of the C.C.A. on a city-wide basis. The ultimate effect of Section 21, the appellant concludes, is to stagnate public interest and allow the dictates of a few to control the will of the majority.

Taking the facts alleged as true, no denial of equal protection or invidious discrimination has been demonstrated.

The Dallas plan simply requires that every City Council candidate must be elected by the entire city. Therefore, the "one man-one vote" principle is automatically complied with because all votes are equal in a city-wide election. (Emphasis ours) The possibility that a particular resident candidate wins in his district but loses city-wide does not amount to discrimination against either the candidate or against the voters of that district. The election is city-wide and the elected official is a representative of the entire city and not merely of a particular district. Consequently we conclude that Section 21 does not constitute a denial of equal protection either per se or in application.

> Stripped of legalese, the appellant is complaining because the citizens of Dallas either from apathy or by design have not exercised the power of the ballot to rid themselves of what the appellant regards as an evil political machine. Whether this view is right or not need not concern us. The wrong of public apathy cannot be righted by judicial compulsion. The district court was correct in granting the City's summary judgment motion."

In the case at bar we have a situation where in Westwego with the population of between ten and twenty thousand people there is the aldermanic form of government which provides for five aldermen. Each alderman runs at large in the City of Westwego and is responsible to the entire population of the city, not any particular ward. During the trial of the case on the merits the plaintiffs did not prove that the manner of electing aldermen was a violation of the equal protection clause, nor did they show that there was an invidious discrimination against a particular class which would operate to minimize or cancel out the voting strength of a racial or political element of the voting population.

The Answer to Question II is best answered by reiterating the Brief submitted to the United States Court of Appeals for the Fifth Circuit, in these proceedings.

II-B

The plaintiffs-appellants contend that the inaction of the State of Louisiana, in not requiring the City of

Westwego to fulfill the statutory requirements in election procedures denies to them equal protection under the laws of the State of Louisiana and that this inaction creates a federal constitutional issue.

The basis for this argument is that L.R.S. 33:382 provides that each city shall be divided into four wards.

That the word *shall* in R.S. 33:382 make it mandatory upon the various municipalities in the State of Louisiana to divide their area into four wards.

In 1970 the Louisiana Legislature passed House Bill No. 667 Act 121 which provided amongst other things that each city *may* be *divided* into four wards. The defendants-appellees contend that since the legislature has acted and it is clear that Act 121 of 1970 makes it permissive for the cities to have an at large election, and therefore, the question that the appellants raised is now moot.

Does the at large election provided for in L.R.S. 33:382 Act 121 La. Leg. 1970 violate the equal protection clause of the Fourteenth Amendment.

The defendants-appellees contend that it does not since this method of electing officials does not cause invidious discrimination.

III

Appellant allege that the actions of the Marshal of the City of Westwego, in the firing and suspending of

his own deputies without the approval of the Mayor and Board of Aldermen, is in contravention of the Louisiana statute, and such conduct is a flagrant disregard of the citizens of Westwego to equal protection under the laws of the United States.

Appellants, Paul A. Clement and Woodrow W. Chabert, are deputies in the police force of the City of Westwego. Paul A. Clement was fired and Woodrow W. Chabert was suspended by Marshal Guillot. Not going into the merits of either the firing or the suspension, it should be noted by this court that under L.R.S. 33:2531 et seq. that the petitioners have remedies afforded by State law which is the civil service law. That both petitioners have availed themselves to this administrative remedy.

The appellants claim that since Marshal Sidney Guillot exercised the authority vested in him by an ordinance passed by the City of Westwego, his exercise of this authority was a violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Judge Lansing L. Mitchell in his reasons for judgment dated June 15, 1970 resolved the problem as follows: (Appendix pages 27, 28, 29).

> "It is petitioners contention that the resolution of the Board of Aldermen (La. R.S. 33:2531 et seq) was an illegal delegation of power since, under the Lawrason Act, only the Mayor and the Board have the authority to hire and fire

city employees, (L.R.S. 33:321 et seq) and since the state, acting through the municipality, has failed to take any action to curb Marshal Guillot or to take any positive action to alleviate law enforcement problems existing in the municipality, petitioners have been denied equal protection of the laws and due process as guaranteed them by the Fourteenth Amendment to the United States Constitution. The Mayor and the Board of Aldermen exercise the governmental powers of the municipality and are responsible for policing the city (L.R.S. 33:362; 33:401; 402 (A) and 404). The Marshal is the Chief of Police; his duties are defined neither by statute or jurisprudence but, because of the nature of his office, he is the chief law enforcement officer of the city and as such has supervision of the police department.

Under the law the Mayor and Board have the authority to prescribe the duties of all officers and employees of the City and the Marshal has the duty to perform all duties required by him by ordinance.

We conclude that there is nothing in the Lawrason Act that precludes the Board of Aldermen from granting to the Chief of Police the power to supervise the police department, which necessarily entails the hiring and firing of the employees within the department.

> No evidence was presented from which we could establish that petitioners' constitutional rights were violated. Adequate state remedies were available and petitioners have made use of them".

Therefore, it is readily ascertainable that there is no basis to the petitioners' claim that the Marshal Sidney J. Guillot has disregarded the rights of the citizens of Westwego to equal protection under the laws of the United States, more particularly those afforded to deputies who are the employees of said city.

Answer to Question III is best answered by reiterating the Brief submitted to the United States Court of Appeals for the Fifth Circuit in these proceedings.

Further, the plaintiff, Paul A. Clement, has presently Proceedings No. 4425, Court of Appeals — Fourth Circuit, State of Louisiana seeking to have himself reinstated. This proceeding offers protection as guaranteed under the Constitution of the United States and the question of reinstatement should be determined by the State Court.

IV

CONCLUSION

It is respectfully submitted by the City of Westwego, defendants-appellees, that the claims of the defendants are without merit. What the plaintiffs have attempted to do is to use the Federal Courts as a means to vin-

dicate their personal differences with the city administration. The questions presented are more in the area of a political question as opposed to a federal question.

Petitioners-appellants claim that the Mayor's Court is unconstitutional. The Louisiana Constitution of 1921 in Article 7 Section 51e provides that the legislature can provide for Mayor's Courts. This provision is carried into effect in L.R.S. 33:441. There is also in Jefferson Parish the Parish Court System which was created by the Louisiana Constitution Article 7 Sec. 51a. These provisions were carried forth in L.R.S. 13:2561.1 and L.R.S. 13:2562.1. The City of Westwego is precluded from having a City Court due to the fact that there is the Parish Court System in Jefferson Parish. In order for Westwego to have a City Court it must be by legislative act (La. Const. Art. 7 Sec. 51b).

The defendants-appellees are of the opinion that prior to Act No. 121 of Louisiana Legislature of 1970 that the manner of electing aldermen in Westwego was constitutionally permissive under *Dusch v. Davis* supra and *Reynolds vs. Simms* supra. If there was a violation of L.R.S. 33:382 then this violation was remedied by Act 121 of Louisiana Legislature of 1970. Therefore, this question is moot.

It should be stressed however that the election of aldermen at large in the City of Westwego has never acted to the detriment of any qualified voter, nor is it invidious discrimination to have an at large election.

The third issue presented for review is that the actions of the Marshal Sidney J. Guillot are in contravention of the United States Constitution. The actions complained of were the suspension and firing of the appellants, respectively, from the Westwego City Police force, and that because the Marshal had the right to fire or suspend his own deputies that this was a violation of the equal protection clause of the Fourteenth Amendment. In fact and in law these petitioners have their administrative remedies which are provided for under Civil Service in LRS 33:2531 et seq. These remedies are adequate and said petitioners have availed themselves to said state remedies. Therefore, the conclusions reached by the trial judge and Court of Appeal are correct and certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief was served by mail on the attorney for the plaintiffs-appellants, Robert J. Stamps, at his address 404 Security Homestead Building, 219 Carondelet Street, New Orleans, Louisiana, this ____ day of May, 1971.

LAZARD LEVY